

# Exhibit A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE **CLERKED COPY**

IN RE ABBOTT LABORATORIES )  
NORVIR ANTITRUST LITIGATION) )  
LITIGATION, )

C-04-1511 CW

TUESDAY, DECEMBER 11, 2007

SAFEWAY, )  
PLAINTIFF, )

OAKLAND, CALIFORNIA

VS. )

ABBOTT LABORATORIES, )  
DEFENDANT. )

C-07-5470 CW

SMITHKLINE BEECHMAN, )  
PLAINTIFF, )

VS. )

C-07-5702 CW

ABBOTT LABORATORIES, )  
DEFENDANT. )

MEIJER, INCORPORATED, )  
PLAINTIFF, )

VS. )

C-07-5985 CW

ABBOTT LABORATORIES, )  
DEFENDANT. )

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

(CAPTION AND APPEARANCES CONTINUED ON NEXT PAGE)

REPORTED BY:

DIANE E. SKILLMAN, CSR #4909, RPR, FCRR  
OFFICIAL COURT REPORTER

ROCHESTER DRUG, )  
CO-OPERATIVE, )  
 )  
PLAINTIFF, )  
VS. ) C-07-6010 CW  
 )  
ABBOTT LABORATORIES, )  
 )  
DEFENDANT. )  
 )

RITE-AID CORPORATION, )  
 )  
PLAINTIFF, )  
VS. ) C-07-6120 CW  
 )  
ABBOTT LABORATORIES, )  
 )  
DEFENDANT. )  
 )

LOUISIANNA WHOLESALE )  
DRUG COMPANY, )  
 )  
PLAINTIFF, )  
VS. ) C-07-6118 CW  
 )  
ABBOTT LABORATORIES, )  
 )  
DEFENDANT. )  
 )

**APPEARANCES:**

FOR DOE & SEIU  
PLAINTIFFS:

BERMAN, DEVALERIO, PEASE,  
TABACCO, BURT & PUCILLO  
425 CALIFORNIA STREET, STE. 2025  
SAN FRANCISCO, CALIFORNIA 94104  
BY: JOSEPH J. TABACCO, ESQUIRE  
JAMES C. MAGID, ESQUIRE

1 DIRECT PURCHASERS.

2 MR. PERWIN: THAT'S RIGHT, YOUR HONOR, THE SAFEWAY  
3 CASE AND THE RITE-AID CASE.

4 THE COURT: OKAY. AND DO YOU ALL WANT TO BE IN THE  
5 CLASS WITH --

6 MR. PERWIN: NO. WE INTEND TO OPT OUT OF THE CLASS  
7 IF ONE IS CERTIFIED.

8 THE COURT: YOU NEED TO SAY WHO YOU ARE.

9 MR. PERWIN: SCOTT PERWIN FOR THE SAFEWAY  
10 PLAINTIFFS.

11 MS. REBUCK: AND MONICA REBUCK ON BEHALF OF THE  
12 RITE-AID PLAINTIFFS. WE ARE IN THE SAME POSITION. WE ARE  
13 OPT-OUTS.

14 TODAY MR. PERWIN WILL BE OFFERING MOST OF THE  
15 DISCUSSION ON BEHALF OF OUR GROUPS.

16 THE COURT: OKAY. IF YOU WOULD STAND OVER THERE BY  
17 THEM SO I CAN REMEMBER WHO YOU ARE.

18 WHAT ARE YOU?

19 MR. WILES: GLAXOSMITHKLINE IS A COMPETITOR AND A  
20 LICENSEE OF THE PATENTS OF ABBOTT.

21 THE COURT: WHERE DO YOU FIT IN IN THE FIGHT BETWEEN  
22 DIRECTS AND INDIRECTS?

23 MR. HURST: THEY'RE IN A DIFFERENT CATEGORY, YOUR  
24 HONOR.

25 MR. WILES: WE'RE IN A COMPLETELY DIFFERENT

1 CATEGORY.

2 **THE COURT:** YOU ARE NOT TRYING TO BE A CLASS OF  
3 ANYBODY?

4 **MR. WILES:** CORRECT. I COULD GIVE IT SOME THOUGHT,  
5 BUT --

6 **THE COURT:** CAN'T FIND ANYONE TO BE IN A CLASS WITH?  
7 IS THAT EVERYBODY?

8 **MS. SALZMAN:** YES, YOUR HONOR.

9 **THE COURT:** WHAT ALL DO YOU KNOW ABOUT WHETHER  
10 ANYBODY ELSE IS GOING TO BE COMING FORWARD?

11 WE ALREADY HAVE -- DID WE GET THE TWO NEWEST ONES TO  
12 COME IN?

13 **THE CLERK:** YES.

14 **THE COURT:** SO EVERYONE WE HAVE SO FAR IS HERE.

15 WHAT DO YOU ALL KNOW THROUGH THE GRAPEVINE OR ANY  
16 OTHER SOURCE AS TO HOW MANY MORE OF THESE CASES ARE COMING DOWN  
17 THE PIKE IF ANY?

18 **MR. PERWIN:** WE DON'T EXPECT ANY MORE, YOUR HONOR.

19 **MS. SALZMAN:** I CONCUR WITH THAT.

20 **THE COURT:** BUT YOU DON'T KNOW. ANYBODY COULD COME  
21 FORWARD AT ANY MOMENT THAT HASN'T BEEN IN TOUCH WITH YOU. SO  
22 YOU ARE SAYING NO ONE HAS BEEN IN TOUCH WITH YOU AT LEAST.

23 WHAT ABOUT YOU, DO YOU KNOW ABOUT ANYBODY?

24 **MR. HURST:** NO, WE DON'T EXPECT ANYBODY BECAUSE THE  
25 FOUR-YEAR STATUTE OF LIMITATIONS IN THE SHERMAN ACT WOULD HAVE

1 EXPIRED ON DECEMBER 4TH.

2 **THE COURT:** OH, THAT'S WHY EVERYBODY --

3 **MR. HURST:** THAT'S WHY EVERYONE IS RUSHING IN.

4 **THE COURT:** CAME IN AT THAT MOMENT. I WONDERED.

5 **MR. HURST:** THAT'S RIGHT.

6 **THE COURT:** DIDN'T HAVE ANYTHING TO DO WITH THE  
7 CASCADE HEALTH CASE.

8 **MR. HURST:** I DON'T IMAGINE THAT PROMPTED ANYBODY TO  
9 FILE A LAWSUIT, YOUR HONOR.

10 **THE COURT:** THAT CAME BEFORE THE STATUTE STARTED TO  
11 RUN.

12 **MR. HURST:** THAT CAME DOWN IN SEPTEMBER.

13 **THE COURT:** OKAY.

14 I DON'T KNOW WHAT TO DO WITH YOU ALL. I DON'T WANT  
15 TO TRY ANYTHING TWICE THAT I DON'T HAVE TO, BUT ON THE OTHER  
16 HAND I DON'T WANT TO PENALIZE PEOPLE WHO HAVE BEEN STRUGGLING  
17 ALONG FOR YEARS AND THEN DELAY THEM WHILE WAITING FOR OTHER  
18 PEOPLE.

19 SO I AM OPEN TO SUGGESTIONS AS TO HOW WE COULD MOST  
20 EFFICIENTLY DEAL WITH THIS WITHOUT DOING ANY TRIALS TWICE  
21 CONSIDERING ISSUES OF COLLATERAL ESTOPPEL, RES JUDICATA,  
22 BIFURCATION, TRYING CERTAIN THINGS, BUT NOT OTHERS. THERE'S AN  
23 INHERENT PROBLEM WITH THE DIRECTS VERSUS THE INDIRECTS ANYWAY I  
24 SUPPOSE, BUT ONLY AS TO DAMAGES NOT AS TO LIABILITY.

25 SO LET ME START WITH THE DOE PEOPLE. IF YOU CAN

1 TELL ME WHAT IDEAS YOU MIGHT HAVE TO AVOID ME HAVING TO TRY  
2 THIS TWICE.

3 **MR. TABACCO:** BY WAY OF BACKGROUND, YOUR HONOR, AS  
4 YOU KNOW, THIS CASE BEGAN IN '04, AND OUR FIRM HAS BEEN  
5 REPRESENTING THE END USERS AND MS. SALZMAN'S FIRM HAS BEEN  
6 REPRESENTING THE THIRD PARTY PAYERS. YOUR HONOR HAS CERTIFIED  
7 THE CASE TO PROCEED AS A CLASS ACTION. IN FACT, WE HAVE A  
8 MOTION FOR APPROVAL OF THE NOTICE PLAN ON THE CALENDAR, I  
9 BELIEVE, IN A FEW WEEKS.

10 **MS. SALZMAN:** THAT'S SET FOR JANUARY 10TH, YOUR  
11 HONOR.

12 **THE COURT:** IS THAT DISPUTED?

13 **MR. HURST:** WE ARE STILL EVALUATING, YOUR HONOR. I  
14 THINK WE'RE SUPPOSED TO RESPOND ON DECEMBER 20TH.

15 **THE COURT:** OKAY. I WOULDN'T THINK THAT WOULD BE  
16 DISPUTED IN A BIG WAY. IF IT WAS, I WOULD THINK YOU CAN WORK  
17 SOMETHING OUT. IF YOU COULDN'T, I WOULD PROBABLY DECIDE IT ON  
18 THE PAPERS.

19 **MS. SALZMAN:** YOUR HONOR, WE HAD GIVEN THE  
20 DEFENDANTS THE NOTICE PAPERS BUT AT THE TIME THE EXPERT  
21 DISCOVERY WAS UNDERWAY AND I THINK THEY WERE UNABLE TO REALLY  
22 TAKE A CLOSE LOOK, SO AS YOU CAN SEE IN OUR MOTION PAPERS, IT  
23 SAYS THAT THEY JUST RESERVE THE RIGHT TO FURTHER COMMENT.

24 WE HAVEN'T DISCUSSED IT, SO THERE MAY BE NO PROBLEM.

25 **MR. HURST:** THERE IS A REASONABLE CHANCE WE WON'T

1 BIFURCATE THEIR DAMAGES?

2 **MR. TABACCO:** YOU KNOW, I THINK IF YOU THINK ABOUT  
3 THAT IN TERMS OF -- IT SOUNDS GREAT ON ITS FACE, BUT IT'S -- IT  
4 COULD WORK. BUT WHEN I THINK ABOUT TRYING A CASE WHERE I AM  
5 TALKING ABOUT PEOPLE WHO ARE VICTIMS IN THE COMMUNITY OF AN HIV  
6 DRUG AND I HAVE MY CO-COUNSEL IS SMITHKLINE AND GLAXO, A BIG  
7 PHARMACEUTICAL COMPANY, I AM GOING TO BE PREJUDICED TO SOME  
8 DEGREE IN TERMS OF TELLING THE JURY ABOUT WHY IT IS THAT BIG  
9 PHARMER DOES CERTAIN THINGS THAT OTHER PEOPLE DON'T DO. SO  
10 RIGHT OFF THE BAT --

11 **THE COURT:** WE CAN BRING IN A THIRD TABLE FOR THEM.

12 **MR. TABACCO:** I AM DELIGHTED TO HAVE THEM ON THE  
13 SIDE OF GOOD AND RIGHT, BUT I THINK EVERYONE WOULD RECOGNIZE --  
14 AND THEN WHEN YOU INTERJECT THE LAYER OF LIABILITY UNDER THE  
15 SHERMAN ACT, THERE ARE DIFFERENT ISSUES THAT EFFECT THOSE  
16 CLAIMS FOR THE WHOLESALERS, AGAIN THEY ARE BUSINESS PEOPLE  
17 DEALING BUSINESS TO BUSINESS, SO MAYBE THIS CAN BE SORTED OUT  
18 WITH SOME CAREFUL CASE MANAGEMENT, BUT I THINK IT IS NOT A  
19 SIMPLE CASE. THERE ARE PATENT ISSUES THAT HAVE TO BE RESOLVED  
20 AND WILL COME UP. AND I THINK BY CONGLOMERATING EVERYTHING FOR  
21 THE SAKE OF SIMPLICITY, PROBABLY WON'T WORK.

22 **THE COURT:** WHAT I AM MOSTLY HEARING IS THAT YOU  
23 DON'T LIKE THE IDEA FOR STRATEGIC REASONS, MORE SO THAN THE  
24 FACT THAT IT ACTUALLY WOULDN'T WORK. AND I AM THINKING IN  
25 TERMS OF JUST THE LIABILITY, AND YOU ARE ENTITLED TO YOUR

1 STRATEGIC REASONS, BUT I AM NOT HEARING ANY REAL PROBLEM WITH  
2 TRYING LIABILITY TOGETHER THAT HAS TO DO WITH EFFICIENCY OR  
3 FAIRNESS.

4 **MR. HURST:** CAN I SPEAK TO THAT, YOUR HONOR?

5 **THE COURT:** LET HER FINISH AND THEN I'LL ASK YOU.

6 **MS. SALZMAN:** ONE OTHER ISSUE I WANTED TO POINT OUT  
7 AND I KNOW IT WAS IN THE PAPERS WE FILED WITH YOUR HONOR, IS  
8 THE REAL ISSUE IS THAT AS PART OF OUR CLASS, WE REPRESENT  
9 INDIVIDUALS WHO ARE SUFFERING FROM HIV AIDS. AND I KNOW YOU  
10 ARE NOT NECESSARILY SAYING THAT YOU WOULDN'T WITH KEEP THE JUNE  
11 TRIAL DATE, BUT THAT IS A BIG CONCERN OF OURS THAT THE CASES  
12 THAT ARE COMING IN ARE GOING TO AT ALL PUSH THAT DATE.

13 **THE COURT:** YOUR CO-COUNSEL SAID THAT. AND I SAID,  
14 TOO, THAT I DIDN'T WANT TO MOVE YOUR TRIAL DATE IF I DIDN'T  
15 HAVE TO.

16 **MS. SALZMAN:** I JUST WANTED TO MAKE THAT POINT TO  
17 MAKE SURE THAT --

18 **THE COURT:** WE HAVE MENTIONED THAT SEVERAL TIMES  
19 ALREADY.

20 ALL RIGHT. WHAT ARE YOUR THOUGHTS?

21 **MR. HURST:** IN TERMS OF WHETHER OR NOT LIABILITY CAN  
22 BE SEPARATED FROM DAMAGES, A COMPONENT OF THE ANTITRUST CHARGE  
23 IS, OF COURSE, INJURY. THAT'S ACTUALLY PART OF LIABILITY.

24 SO, THERE WOULD BE REALLY NO DIFFERENCE IN TERMS OF  
25 SEGREGATING OUT DAMAGES IN TERMS OF WHAT WOULD BE REQUIRED OF

1 ALL OF THE PLAINTIFFS. THEY'D STILL --

2 **THE COURT:** THERE'S SOME SORT OF -- NOT SOME SORT,  
3 THERE IS A CONFLICT BETWEEN THE DIRECTS AND INDIRECTS WITH  
4 RESPECT TO DAMAGES, AND THEY DON'T WANT TO BE AND PERHAPS CAN'T  
5 BE DONE TOGETHER.

6 **MR. HURST:** RIGHT, BUT IN ORDER TO ESTABLISH  
7 LIABILITY, THEY ALL HAVE TO SHOW ANTITRUST INJURY. THAT IS  
8 PART OF THE ELEMENT OF THE CLAIM, SO THEREFORE IT DOESN'T  
9 REALLY ACCOMPLISH ANYTHING TO SEPARATE OUT DAMAGES BECAUSE THEY  
10 WOULD BE -- THE INJURY PART IS DIFFERENT BETWEEN THESE GROUPS,  
11 INCLUDING THE CLASS, YOUR HONOR.

12 THE ORIGINAL CLASS IS SAYING WE ONLY REPRESENT FOLKS  
13 WHO BOUGHT NORVIR AS A BOOSTER. THE NEW CLASS THAT HAS COME IN  
14 AND SOME OF THE INDIVIDUAL ACTIONS ARE SAYING THAT THEY WANT  
15 DAMAGES FOR THE PURCHASE OF KALETRA AS WELL. AND THEY WANT TO  
16 ACTUALLY REPRESENT KALETRA PURCHASERS. THAT ADDS A LAYER OF  
17 COMPLEXITY RELATING TO THE LIABILITY ISSUES THAT WE HAVE NEVER  
18 HAD TO GRAPPLE WITH BEFORE. IT'S AN ENTIRELY NEW LAWSUIT,  
19 ESSENTIALLY, ON AN ISSUE THAT WE HAVE NOT RESOLVED BETWEEN THE  
20 PARTIES SO FAR. WE HAVEN'T DONE THAT YET.

21 **THE COURT:** WHAT'S YOUR BOTTOM LINE?

22 **MR. HURST:** MY BOTTOM LINE, YOUR HONOR, IS I'M --  
23 ONE DISADVANTAGE FOR US GOING FORWARD WITH ONE CASE IS THAT IF  
24 WE LOSE AND IT GETS AFFIRMED ON APPEAL, I'M DONE; COLLATERAL  
25 ESTOPPEL. I AM WILLING TO ACCEPT THAT. IT IS AN ADVANTAGE TO

1           **THE COURT:** YES.

2           **MR. PERWIN:** AND I RESPECTFULLY DISAGREE, YOUR  
3 HONOR. I THINK THE SCHEDULE --

4           **THE COURT:** ALL RIGHT. WHAT ABOUT YOU?

5           **MS. REBUCK:** MONICA REBUCK ON BEHALF OF THE RITE-AID  
6 PLAINTIFFS.

7           WE AGREE WITH MR. PERWIN THAT WE SHOULD BE GIVEN AN  
8 OPPORTUNITY --

9           **THE COURT:** WHICH ONE IS PERWIN NOW?

10          **MS. REBUCK:** THE SAFEWAY PLAINTIFFS.

11          THAT WE SHOULD BE GIVEN AN OPPORTUNITY TO GET  
12 OURSELVES IN THE POSITION TO TRY IT IN JUNE.

13          **THE COURT:** OKAY. WHAT ABOUT YOU?

14          **MR. WILES:** YOUR HONOR, IN RESPONSE TO YOUR REQUEST,  
15 WHAT WE DID FOR GSK WAS TRY TO SEE IF WE COULD COME UP WITH A  
16 SCHEDULE THAT WOULD MAKE IT FEASIBLE FOR US TO GO TO TRIAL WITH  
17 THE DOE PLAINTIFFS.

18          IT WOULD REQUIRE A DELAY, IN OUR VIEW, OF THREE OR  
19 FOUR MONTHS, I THINK IT'S FOUR MONTHS TO THE 20TH OF OCTOBER.

20          WE ARE PREPARED TO ALLOW THEM TO GO FIRST IF THAT'S  
21 WHAT YOUR HONOR DECIDES. IF YOUR HONOR FEELS AS WAS OUR  
22 IMPRESSION FROM THE ORDERS THAT WE GOT THAT YOU REALLY ONLY  
23 WANT TO TRY THIS ONCE, WE COULD LIVE WITH A TRIAL DATE IN THE  
24 MIDDLE OF OCTOBER, WHICH IS ONLY A MODEST DELAY.

25          **THE COURT:** WELL, I THINK WHAT I'LL DO IS TRY THE

1 INDIRECTS IN JUNE AND TRY THE DIRECTS AT SOME LATER DATE, BOTH  
2 CLASS AND OPT-OUTS. AND THEN THE QUESTION IS WHERE -- DO YOU  
3 FIT BEST IN JUNE WITH THE INDIRECTS, SOMETIME LATER WITH THE  
4 DIRECTS, OR AS A VERY UNDESIRABLE CLEAR CHOICE SEPARATELY?

5 **MR. WILES:** I WOULD SAY -- BOTH WE AND ABBOTT AT  
6 LEAST AGREE ON ONE THING, AND THAT IS THAT JUNE WOULD NOT BE  
7 APPROPRIATE FOR TRIAL OF OUR DISPUTE WITH ABBOTT.

8 **THE COURT:** THAT WOULD MEAN THAT YOU WOULD HAVE TO  
9 GO WITH THE DIRECTS.

10 **MR. WILES:** SO LOGICALLY EITHER WE WOULD GO WITH THE  
11 DIRECTS OR CONCEIVABLY ON OUR OWN, BUT I THINK LOGICALLY WE  
12 WOULD GO WITH THE DIRECTS.

13 **THE COURT:** IS THERE ANY BIG OBSTACLES WITH YOU  
14 GOING WITH THE DIRECTS? ANY SORT OF SUBSTANTIVE OBSTACLE?

15 **MR. WILES:** NOT THAT I CAN THINK OF.

16 **THE COURT:** DO ANY OF THE DIRECTS SEE ANY  
17 SUBSTANTIVE OBSTACLE?

18 **MR. SAVERI:** NOT AS I STAND HERE TODAY. WE'VE GOT,  
19 OF COURSE, SOME ISSUES THAT HAVE TO DO WITH SORTING THROUGH THE  
20 PLEADINGS AND PERHAPS SOME MOTIONS, BUT NOW BASED ON WHAT I  
21 KNOW, I THINK THE CASES COULD GO FORWARD TOGETHER.

22 **THE COURT:** ANYONE DISAGREE?

23 **MR. PERWIN:** JUDGE, JUST SLIGHTLY. THERE ARE  
24 OBVIOUSLY DIFFERENT DAMAGE THEORIES; THAT'S A LOSS PROFITS  
25 THEORY, WE HAVE OVERCHARGE THEORIES. IT CAN BE CONFUSING TO

1 THE JURY, AND I JUST WANT TO RESERVE THE POSSIBILITY OF ASKING  
2 FOR SEPARATE DAMAGE TRIALS. I DON'T THINK THERE'S ANYTHING  
3 ABOUT THE LIABILITY CASE THAT COULDN'T BE TRIED TOGETHER.

4 **MR. SAVERI:** I AGREE WITH THAT, YOUR HONOR.

5 **THE COURT:** IS THAT ALL RIGHT WITH YOU? WE TRY THE  
6 COMPETITORS WITH THE DIRECTS?

7 **MR. HURST:** THERE'S NOTHING THAT OCCURS TO ME AS AN  
8 OBSTACLE TO THAT RIGHT NOW. THE DATE -- I WILL WANT TO TALK  
9 ABOUT THAT LATER -- THE DATE WOULD HAVE TO BE FAIRLY EXTENDED  
10 BECAUSE THE CASE WITH GSK IS ENTIRELY DIFFERENT BECAUSE IT HAS  
11 NEW CAUSES OF ACTION, BREACH OF LICENSE -- BREACH OF THE  
12 LICENSE AGREEMENT, NORTH CAROLINA ANTITRUST LAW.

13 **THE COURT:** OKAY.

14 THE ONLY OTHER OBSTACLES -- YOU KNOW, THIS JUNE  
15 TRIAL DATE ALSO DEPENDS ON THE MOTIONS THAT WE ARE HEARING IN  
16 LATE MARCH. THOSE INCLUDE BOTH ANTITRUST MOTIONS AND PATENT  
17 MOTIONS AND CLAIM CONSTRUCTION, AND IT GIVES ME ONLY THREE  
18 MONTHS BETWEEN THEN AND THE START OF TRIAL. THAT I JUST CAN'T  
19 SWEAR I WILL BE ABLE TO GET IT DONE IN TIME IF IT'S DIFFICULT,  
20 PARTICULARLY IN TIME FOR YOU TO DO ALL YOUR PRETRIAL WORK AND  
21 ALL THAT.

22 SO, WHILE I WILL TRY TO TRY IT IN JUNE, IF YOU  
23 MAKE -- IF THEY MAKE REALLY COMPLICATED MOTIONS, I MAY NOT BE  
24 ABLE TO.

25 **MR. TABACCO:** WE UNDERSTAND.

1           **THE COURT:** I DON'T HAVE ANY COMPETING TRIALS UNLESS  
2 A CRIMINAL CASE SHOULD COME ALONG, BUT I HAVE BEEN -- IT HAS  
3 BEEN KNOWN TO TAKE THAT LONG TO DECIDE DIFFICULT PATENT  
4 MOTIONS.

5           YOU'RE JUNE 30TH. THERE IS NOTHING REALLY  
6 DOUBLESET. I HAVE YOU DOWN FOR EIGHT DAYS.

7           **MR. HURST:** I THINK --

8           **THE COURT:** I CAN'T REALLY GIVE YOU ANY MORE THAN  
9 THAT.

10          **MR. TABACCO:** THAT'S FINE.

11          **MR. HURST:** I GUESS I WOULD ANTICIPATE THE TRIAL  
12 WILL END UP BEING, AS WE'RE SEEING THINGS SHAPE UP, YOUR HONOR,  
13 POTENTIALLY IF IT WENT FORWARD ON ALL OF THE ISSUES, INCLUDING  
14 THE THREE PATENTS, IT WILL TAKE LONGER THAN EIGHT DAYS.

15          **THE COURT:** DIVIDE THE TIME BY TWO. EIGHT DAYS IS  
16 WHAT I HAVE HAD IT FOR ALL ALONG. I HAVE SOMETHING RIGHT AFTER  
17 IT THAT I CAN'T CHANGE.

18          OKAY. SO THAT'S THAT.

19          SO WE DON'T NEED TO DO ANYTHING WITH DOE'S BECAUSE  
20 YOU HAVE ALL YOUR DATES.

21          **MS. SALZMAN:** GREAT. THANK YOU.

22          **THE COURT:** WHAT WE THEN NEED TO DO IS COME UP WITH  
23 DATES FOR EVERYBODY ELSE. AND I WILL LOOK AT THESE CASE  
24 MANAGEMENT SCHEDULES.

25          **MR. TABACCO:** WE WILL GET OUT OF THE WAY, YOUR

1 SAFEWAY CASE.

2 THE COURT: IS THIS GOING TO BE THE SAME MOTION OR  
3 WILL THERE BE --

4 MR. HURST: I GUESS I WOULD LIKE -- I AM GETTING  
5 CONFUSED ABOUT WHICH PLAINTIFFS ARE ALLEGING WHAT CLAIMS, BUT  
6 IF IT IS THE SAME SHERMAN ACT CLAIM, IT WOULD BE THE SAME  
7 MOTION.

8 THE COURT: OKAY.

9 NOW SOMEBODY WANTS TO MOVE TO TRANSFER ONE OF THEM  
10 SOMEWHERE.

11 MR. HURST: THAT WAS ABBOTT SEEKING TO TRANSFER SO  
12 FAR THE GSK CASE, THE GLAXOSMITHKLINE CASE.

13 THE COURT: ONLY THAT ONE?

14 MR. HURST: SO FAR, YES, YOUR HONOR.

15 SOME OF THE OTHER COMPLAINTS WERE EVALUATED, BUT  
16 THEY HAVE NO CALIFORNIA CONNECTION, AND SO THERE IS A  
17 POSSIBILITY MORE MOTIONS TO TRANSFER WOULD COME IN.

18 THE COURT: OKAY. HAVE YOU FILED A MOTION TO  
19 TRANSFER THE SMITH --

20 MR. HURST: WE HAVE THIS MORNING, OR THIS AFTERNOON,  
21 YOUR HONOR.

22 THE COURT: OKAY.

23 MR. WILES: WE HAVEN'T SEEN IT, BUT WE WILL BE  
24 OPPOSING IT.

25 THE COURT: THAT IS NOTICED FOR WHEN?

1                   **MR. HURST:** FOR FEBRUARY --

2                   **MR. WILES:** 20TH.

3                   **MR. HURST:** 21ST.

4                   **THE COURT:** YOU FILED IT FAR IN ADVANCE.

5                   **MR. HURST:** WE DID, YOUR HONOR.

6                   **THE COURT:** THAT DATE MIGHT WORK FOR ALL THE MOTIONS  
7 TO DISMISS AS WELL BECAUSE I AM HERE AND NOT --

8                   **MR. HURST:** I HAVE A TRIAL STARTING FEBRUARY 4TH  
9 THAT SHOULD BE FINISHED BY THE 21ST, BUT THERE IS NO GUARANTEE.  
10 SO --

11                   **THE COURT:** IS THERE A PROBLEM WITH THE 21ST,  
12 SHEILAH?

13                   **THE CLERK:** THAT WOULDN'T QUITE BE EIGHT WEEKS YOU  
14 NEED.

15                   **THE COURT:** FOR THE MOTIONS TO DISMISS.

16                   **THE CLERK:** 20 DAYS TO ANSWER AND FIVE DAYS --

17                   **THE COURT:** YOU SAID YOU HAD WHAT?

18                   **MR. HURST:** ACTUALLY, I HAVE A TRIAL THAT STARTS ON  
19 FEBRUARY 4TH. RIGHT NOW IT IS SCHEDULED TO BE FINISHED BY  
20 THE 21ST. IF WE ARE GOING TO COLLECT EVERYTHING, MOTIONS TO  
21 DISMISS AND THE MOTION TO TRANSFER, A LATER DATE WOULD ACTUALLY  
22 BE BETTER FOR ME AS WELL.

23                   **THE COURT:** OKAY. WHAT DATE WOULD WORK, SHEILAH?

24                   JANUARY 11, PLUS 20 DAYS, PLUS FIVE WEEKS. THAT'S  
25 REALLY PLUS EIGHT WEEKS. JANUARY 11TH PLUS EIGHT WEEKS.

1           **THE CLERK:** MARCH 6TH?

2           **THE COURT:** HOW IS MARCH 6TH?

3           **MR. WILES:** ACCEPTABLE TO US.

4           **MR. HURST:** THAT'S ACCEPTABLE TO US, YOUR HONOR.

5           **THE COURT:** OKAY.

6                   BUT WHAT I WOULD LIKE YOU TO DO IS FILE THE MOTION  
7 TO DISMISS 20 DAYS AFTER THE CONSOLIDATED COMPLAINT IS FILED  
8 EVEN THOUGH THAT WILL BE LONG BEFORE THE ACTUAL HEARING, JUST  
9 FILE IT THEN.

10           **MR. HURST:** THAT'S FINE.

11           **THE COURT:** NOTICE IT FOR THE 6TH.

12                   THEN I WANT ALL THE OPPOSITIONS TO COME IN FROM THE  
13 DATE THE MOTIONS ARE FILED AS OPPOSED TO BACKWARDS. IN OTHER  
14 WORDS, I WANT MORE TIME INSTEAD OF YOU GETTING MORE TIME.

15                   SO BOTH WITH RESPECT TO THE MOTION TO TRANSFER,  
16 WHICH IS ALREADY FILED, AND THEN ANY OTHER MOTION TO TRANSFER  
17 THAT HAPPENS TO GET FILED AND ANY MOTIONS TO DISMISS THAT ARE  
18 FILED, FILE YOUR OPPOSITIONS TWO WEEKS AFTER THE MOTIONS ARE  
19 FILED, FILE YOUR REPLIES A WEEK AFTER THAT, AND THAT WILL JUST  
20 GIVE ME SOME EXTRA TIME TO PREPARE FOR THEM ON THE 6TH.

21           **MR. WILES:** THAT WILL WORK FOR US. THEIR DATE TO  
22 RESPOND TO THE COMPLAINT IN OUR CASE IS JANUARY 3RD. WE HAD  
23 NEGOTIATED AN AGREEMENT THAT WE WOULD GET FOUR WEEKS TO  
24 RESPOND. SO THAT WOULD BE JANUARY 31ST, I THINK. SO THAT'S  
25 ROUGHLY THE SAME PERIOD OF TIME. IF WE CAN HAVE UNTIL

1 JANUARY 31ST, WE WILL BE FINE.

2 THE COURT: TO DO WHAT?

3 MR. WILES: TO OPPOSE THE MOTION TO DISMISS.

4 THE COURT: THAT SHOULD BE -- THAT WOULD BE THE  
5 25TH. CAN YOU DO IT BY THE 25TH?

6 MR. WILES: YES.

7 THE COURT: OKAY.

8 MR. PERWIN: YOUR HONOR, SCOTT PERWIN. THEY HAVE  
9 ALREADY FILED THEIR MOTION IN THE SAFEWAY CASE AND NOTICED IT  
10 FOR SOMETIME IN MID-JANUARY.

11 SO THAT HEARING DATE IS OFF; IS THAT RIGHT?

12 THE COURT: IT IS OFF.

13 MR. PERWIN: AND WOULD IT BE POSSIBLE FOR US TO FILE  
14 A CONSOLIDATED RESPONSE IF IT'S GOING TO BE THE SAME MOTION  
15 RATHER THAN FILING OUR RESPONSE AND THEN HAVING IT ESSENTIALLY  
16 DUPLICATED BY THE OTHER PLAINTIFFS?

17 THE COURT: YES, IT WOULD.

18 MR. PERWIN: OKAY.

19 THE COURT: SO I AM GOING TO RE-NOTICE THIS THING  
20 THAT YOU HAVE ALREADY FILED -- OR DO YOU WANT TO JUST WITHDRAW  
21 IT AND FILE ONE?

22 MR. HURST: IF THERE'S--

23 THE COURT: LET'S DO THAT.

24 MR. HURST: THAT MAKES THE MOST SENSE.

25 THE COURT: LET ME JUST DENY THIS WITHOUT

1 PREJUDICE --

2 MR. HURST: THAT'S FINE.

3 THE COURT: -- AND LET'S HAVE YOU FILE --

4 MR. HURST: ONE SINGLE --

5 THE COURT: -- ONE SINGLE MOTION TO DISMISS ALL OF  
6 THEM. AND THEY CAN HAVE SEPARATE SECTIONS IF THERE'S SOME  
7 PARTICULAR CAUSE OF ACTION THAT'S IN ONE BUT NOT THE OTHER, BUT  
8 JUST GIVE ME ONE BRIEF SO I DON'T HAVE TO READ THE FACTS OVER  
9 AND OVER.

10 MR. HURST: THAT IS SIMPLE ENOUGH.

11 THE COURT: AND THEN YOU CAN ALL RESPOND IN ONE  
12 BRIEF. AND IF ANYONE HAS SOMETHING THEY NEED TO RESPOND TO  
13 THAT'S NOT IN EVERYBODY ELSE'S CASE, YOU CAN HAVE PREFERABLY  
14 REALLY A SEPARATE SECTION IN ONE BRIEF SO, AGAIN, I DON'T HAVE  
15 TO READ ALL THE FACTS.

16 MR. SAVERI: THAT'S FINE, YOUR HONOR. IF WE HAVE  
17 PROBLEMS WITH PAGE LIMITS OR SOMETHING LIKE THAT, I AM SURE WE  
18 CAN WORK THAT OUT.

19 MR. WILES: WERE YOU DIRECTING THAT TO GSK AS WELL?

20 THE COURT: YES, TO THE EXTENT YOU CAN.

21 MR. HURST: YOUR HONOR, ACTUALLY IT WOULD NOT REALLY  
22 WORK WITH GSK. THEY HAVE THE SAME CASCADE PROBLEM IN OUR VIEW,  
23 BUT THERE'S A LOT MORE COMPLEXITY TO THEIR CASE. IT WOULD BE A  
24 COMPLETELY DIFFERENT MOTION.

25 THEY HAVE FOUR COUNTS, NORTH CAROLINA COUNT, BREACH

1 OF CONTRACT. IF IT WOULD BE ACCEPTABLE, IT WOULD BE, I THINK,  
2 MORE -- IT WOULD BE AN UNDULY COMPLICATED MOTION IF WE TRIED TO  
3 DO ONE MOTION FOR EVERYBODY.

4 **THE COURT:** SO YOU WANT TO DO A SEPARATE MOTION --

5 **MR. HURST:** I WANT TO DO A SEPARATE GSK MOTION.

6 **THE COURT:** OKAY.

7 **MR. HURST:** I THINK IT WILL BE SIMPLER. I WON'T  
8 REPEAT THE CASCADE. IN FACT, WHAT I COULD DO IS I COULD SAY,  
9 "FOR MY CASCADE ARGUMENT, LOOK AT MY OTHER BRIEF."

10 HOW ABOUT IF I DO THAT?

11 **THE COURT:** GOOD.

12 **MR. HURST:** OKAY.

13 **THE COURT:** SO THAT'S THAT.

14 **MS. REBUCK:** YOUR HONOR, DID YOU SET DATES THEN FOR  
15 THEM TO FILE THIS CONSOLIDATED MOTION TO DISMISS AND A RESPONSE  
16 DATE?

17 **THE COURT:** I THINK I DID.

18 **MS. NUSSBAUM:** TWENTY DAYS AFTER JANUARY 11TH, WHICH  
19 IS THE FILING OF THE AMENDED COMPLAINT IS WHEN WE HAVE TO FILE.  
20 I BELIEVE SHE SAID YOU GET 20 DAYS AFTER THAT TO OPPOSE.

21 **THE COURT:** TWO WEEKS.

22 **MS. REBUCK:** TWO WEEKS.

23 **THE COURT:** YOU ARE GOING TO FILE THE CONSOLIDATED  
24 AMENDED COMPLAINT ON THE 11TH?

25 **MR. HURST:** WE WILL FILE OUR MOTION TO DISMISS

1 WITHIN 20 DAYS.

2 THE COURT: SO THAT WILL BE THE -- WELL REALLY  
3 THE 31ST.

4 MR. HURST: YES.

5 THE COURT: SO YOUR OPPOSITION ACTUALLY IS LATER  
6 THAN I THOUGHT. YOUR OPPOSITION WON'T BE DUE UNTIL THE 14TH OF  
7 FEBRUARY.

8 MR. WILES: HE WAS INTENDING TO FILE HIS MOTION ON  
9 OUR CASE ON JANUARY 3RD.

10 MR. HURST: SHOULD WE PUT EVERYTHING ON THE SAME  
11 SCHEDULE?

12 THE COURT: NOW WE ARE NOT GOING TO DO THAT ANYMORE.

13 MR. WILES: THEN I GUESS -- WHAT I'M SAYING IS THAT  
14 GIVEN THE COMPLEXITY OF OUR CASE, I WOULD LIKE A LITTLE MORE  
15 TIME TO DO THE MOTION TO DISMISS. WE HAD NEGOTIATED FOUR WEEKS  
16 WITH THEM IN EXCHANGE FOR THE STIPULATION ON THE MOTION -- THE  
17 ANSWER DATE. AND SO I CAN LIVE WITH THREE, BUT I WOULD LIKE  
18 THREE AT LEAST.

19 THE COURT: WELL, WHY DON'T YOU FILE A DRAFT OF THE  
20 PART THAT HAS TO DO WITH HIM EARLIER.

21 MR. HURST: HOW ABOUT IF I FILE MY MOTION TO DISMISS  
22 THE GSK CASE A WEEK EARLIER THAN THE OTHER ONE. THAT WILL GIVE  
23 THEM MORE TIME. DOES THAT WORK?

24 MR. WILES: THAT'S FINE.

25 THE COURT: IS IT GOING TO HAVE YOUR CASCADE THING

1 IN IT?

2 **MR. HURST:** I WON'T PUT THE -- I DON'T WANT TO  
3 REPEAT THE ARGUMENT TWICE BECAUSE THAT JUST BURDENS --

4 **THE COURT:** IT'S NOT GOING TO HAVE THE CASCADE PART,  
5 BUT IF YOU WANT TO KNOW WHAT HE'S GOT TO SAY ABOUT THAT, YOU  
6 CAN ALWAYS READ THAT.

7 **MR. WILES:** I READ IT OUT IN THE HALLWAY.

8 **THE COURT:** OKAY.

9 THEN THE OPPOSITIONS ARE GOING TO BE DUE ON THE  
10 14TH OF FEBRUARY AND THE REPLY ON THE 21ST, AND HEARING ON THE  
11 6TH.

12 SO I DON'T GET ANY EXTRA TIME AFTER ALL.

13 **MR. HURST:** SHOULD WE MOVE --

14 **THE COURT:** NO, NO, NO. I AM JUST KIDDING.

15 **MR. HURST:** I WOULD BE HAPPY TO FILE EARLIER.

16 **THE COURT:** THAT'S ALL RIGHT. OKAY.

17 OKAY. THEN WE HAVE SETTLEMENT.

18 PLAINTIFFS PROPOSE A MAGISTRATE JUDGE. WE USUALLY  
19 TRY TO USE SOMETHING ELSE FIRST BEFORE A MAGISTRATE JUDGE, AND  
20 IN PARTICULAR IN THIS CASE, I THINK WE WOULD BE HARD PRESSED TO  
21 THE FIND A MAGISTRATE JUDGE WHO WOULD HAVE THE TIME TO DEVOTE  
22 TO ALL OF YOU, SO I PROPOSE THAT YOU AGREE ON A PRIVATE  
23 MEDIATOR AND USE THE SAME PERSON FOR ALL THE CASES.

24 HAS DOE SEEN ANYBODY?

25 **MS. SALZMAN:** YOUR HONOR, WE WENT TO MAGISTRATE

1 WITHIN THE SAME BRIEF.

2 **MR. HURST:** UNDERSTOOD.

3 **THE COURT:** IF YOU NEED MORE PAGES, YOU CAN ASK.

4 THE DEFAULT WOULD BE ALL THE CASES, ALL ISSUES, EVERYTHING IN  
5 ONE 25-PAGE BRIEF.

6 IF YOU CAN'T DO THAT, YOU WILL HAVE TO ASK  
7 PERMISSION FOR WHAT YOU WANT.

8 OPPOSITIONS IDEALLY, OPPOSITION AND CROSS-MOTION  
9 WOULD BE A JOINT ONE FROM EVERYBODY IN ONE 25-PAGE BRIEF. IF  
10 YOU CAN'T DO THAT OR WANT MORE PAGES OR WANT SEPARATE BRIEFS OR  
11 WHATEVER, MAKE ME AN OFFER.

12 **MR. WILES:** AGAIN, GSK IS GOING TO NEED A SEPARATE  
13 BRIEF. I CAN TELL, I KNOW ALREADY BECAUSE OF WHAT I HEARD  
14 COUNSEL SAY.

15 **THE COURT:** WELL, I DON'T SEE IT AS A SEPARATE  
16 BRIEF. IT CAN BE A SEPARATE SECTION IN THE BRIEF. SURELY THE  
17 STATEMENT OF FACTS WILL BE THE SAME.

18 **MR. HURST:** THEY REALLY DO HAVE A FAIRLY INDEPENDENT  
19 CAUSE OF ACTION RELATING TO THE LICENSE AGREEMENT. SO IT IS A  
20 SEPARATE -- I WILL MAKE MY BRIEF, IF I CAN DO IT, ONE 25-PAGE  
21 BRIEF, BUT I DON'T DISAGREE THERE IS AN ENTIRELY DISTINCT AND  
22 SEPARATE CAUSE OF ACTION WITH GSK.

23 **MR. WILES:** THE FACTS ARE GOING TO BE VERY SIMILAR,  
24 BUT THERE IS A DIFFERENT CAUSE OF ACTION.

25 **THE COURT:** OKAY. WELL, IN YOUR MOTION FOR EXCESS

1 PAGES, YOU CAN ASK TO HAVE YOUR ISSUE ADDRESSED SEPARATELY IN  
2 SOME PARTICULAR AMOUNT OF PAGES, WHILE ALL YOUR COMMON ISSUES  
3 ARE ADDRESSED JOINTLY WITH EVERYBODY ELSE. YOU CAN MAKE ME AN  
4 OFFER, BUT THAT TELLS ME HOW MANY PAGES I AM GOING TO HAVE TO  
5 READ ALTOGETHER IN SUCH A WAY AS TO MINIMIZE HAVE TO READ THE  
6 SAME ARGUMENTS OR THE SAME FACTS MORE THAN ONCE.

7 OPPOSITION AND CROSS-MOTION MAY 14TH.

8 **MR. HURST:** 21 DAYS FOR A REPLY?

9 **THE COURT:** OKAY. I WAS GOING TO GIVE YOU A MONTH.

10 **MR. HURST:** I SHOULD HAVE SHUT UP.

11 **THE COURT:** JUNE 11TH FOR YOUR REPLY. AND THAT  
12 MIGHT ALSO END UP BEING AN OPPOSITION TO A CROSS-MOTION. THEY  
13 DON'T THINK THEY ARE GOING TO MAKE ONE, BUT IF THEY DO --

14 **MR. HURST:** IF THEY DO AND I NEED MORE TIME, AND I  
15 CAN POTENTIALLY ASK THAT?

16 **THE COURT:** YOU CAN, YES.

17 AND THEN JUNE 18TH WOULD BE THE REPLY TO ANY  
18 CROSS-MOTION YOU MIGHT HAVE FILED. AND THEN WE HAVE GOTTEN UP  
19 TO JULY 9TH, LET'S SAY, FOR A HEARING. WE ARE IN '09 NOW.

20 HOW DID I GET ON JULY 9? OH, JULY. OKAY.

21 SO -- WELL, THAT CAUSES ME -- WHAT I AM GOING TO DO  
22 THEN IS SET IT FOR TRIAL IN DECEMBER OF '09. SO SHALL WE SAY  
23 DECEMBER 7TH?

24 **MR. WILES:** IS IT POSSIBLE TO MOVE THE TRIAL UP TO  
25 NOVEMBER SO WE CAN GET IT DONE BEFORE THE HOLIDAYS?

1           **THE COURT:** IT'S NOT, BUT I CAN DO IT IN JANUARY IF  
2 YOU WOULD LIKE.

3           **MR. HURST:** JANUARY SOUNDS FINE TO ME.

4           **MR. PERWIN:** I PREFER DECEMBER, BUT --

5           **THE COURT:** HOW LONG DID YOU SAY IT WILL TAKE?

6           **MR. WILES:** DECEMBER IS FINE WITH US.

7           **MR. HURST:** I THINK NOBODY HAS COME UP WITH AN  
8 ESTIMATE, BUT IF EVERYBODY IS IN ONE TRIAL, I WOULD THINK THIS  
9 WOULD BE A FOUR-WEEK TRIAL, PROBABLY.

10           **MR. SAVERI:** I AM THINKING SOMETHING LIKE THREE TO  
11 FOUR WEEKS, BUT.

12           **MR. HURST:** DEPENDS ON THE EXPERTS, ET CETERA, ET  
13 CETERA.

14           **MR. SAVERI:** IT ALSO DEPENDS, I THINK, TO SOME  
15 EXTENT TO WHAT HAS BEEN RESOLVED BY WHAT ELSE HAS HAPPENED IN  
16 THE CASE BY THAT POINT.

17           **THE COURT:** EVEN A THREE-WEEK TRIAL WOULD RUN INTO  
18 CHRISTMAS. THAT WOULD BE HARD TO PICK A JURY.

19           **MR. SAVERI:** I THINK THAT'S A BAD IDEA.

20           **THE COURT:** SO WE BETTER MAKE IT JANUARY. HOW ABOUT  
21 THE 11TH? YOU DON'T WANT TO START IT ON THE 4TH.

22                   JANUARY 11TH. I WILL PUT IT --

23           **MR. PERWIN:** 2010?

24           **THE COURT:** YEAH. I WILL PUT IT DOWN FOR THREE  
25 WEEKS. I AM TRYING THEM FIVE DAYS A WEEK NOW, SO THAT'S 15

1 DAYS. I REALLY THINK THAT IS ENOUGH.

2 MR. PERWIN: WE WILL DO IT, JUDGE.

3 THE COURT: WE WILL HAVE A PRETRIAL CONFERENCE ON  
4 DECEMBER 22ND.

5 OKAY. SO I THINK THAT'S ALL UNLESS ANYONE HAS  
6 ANYTHING ELSE.

7 MR. HURST: I DO HAVE TWO MORE ISSUES REALLY  
8 QUICKLY, YOUR HONOR.

9 THE COURT: OKAY.

10 MR. HURST: WE DID FILE A MOTION TO TRANSFER WITH  
11 RESPECT TO GSK. WE DO INTEND TO FILE -- WE ARE EVALUATING  
12 FILING ADDITIONAL MOTIONS TO TRANSFER, BUT GIVEN THE SCHEDULE,  
13 WOULD -- COULD I PROCEED WITH MY DISCOVERY WITHOUT PREJUDICE TO  
14 MY MOTION TO TRANSFER GIVEN THE POSSIBILITY THAT I MIGHT LOSE  
15 ON THE MOTION TO TRANSFER, BUT IT WILL BE DOWN THE ROAD?

16 THE COURT: SURE. SURE.

17 MR. HURST: SECOND ISSUE IS, AND PLAINTIFFS CAN  
18 DISAGREE WITH ME, BUT I THINK THAT THEIR CLAIMS NECESSARILY  
19 TURN ON THE SCOPE OF THE PATENTS THAT YOU ARE FAMILIAR WITH AND  
20 MAYBE EVEN THE VALIDITY. I DON'T KNOW THE ORIGINAL CLAIM,  
21 THEY'RE CHALLENGING THE VALIDITY OF THOSE PATENTS.

22 IF I AM CORRECT THAT THEIR CLAIMS TURN ON THE PATENT  
23 LAWS, CAN WE HAVE AN ORDER THAT THE LOCAL PATENT RULES APPLY?

24 THE COURT: NO, NOT WHOLESALE, BUT WE WILL NEED A  
25 SCHEDULE FOR THAT.

1 THE CLAIM CONSTRUCTION WOULD BE DONE AT THE TIME OF  
2 THE CASE DISPOSITIVE MOTION, SO THERE'S A DIFFERENCE FROM THE  
3 PATENT RULES RIGHT THERE. ALTHOUGH WE ARE ABOUT TO CHANGE THE  
4 PATENT RULES. I DON'T KNOW IF WE DID THAT YET.

5 MR. HURST: NOT THAT I KNOW OF.

6 THE COURT: WE HAVE SOME CHANGES IN THE WORKS.

7 MR. WIEBE: THE NEW PATENT LOCAL RULES HAVE TAKEN  
8 EFFECT.

9 THE COURT: BUT I THINK THEY'RE STILL THE SAME --  
10 SOME OF US NOW ARE DOING CLAIM CONSTRUCTION WITH MOTIONS FOR  
11 SUMMARY JUDGMENT, BUT I THINK EVEN THE NEW RULES STILL HAVE IT  
12 THE OTHER WAY. BUT I DO IT THE WAY I DO IT.

13 BUT THE NOTION OF HAVING A DISCLOSURE OF CLAIMS AND  
14 ALL THAT IS A GOOD NOTION. RATHER THAN DO THAT NOW, WHAT I  
15 WOULD LIKE YOU TO DO IS SEE IF YOU CAN WORK OUT A SCHEDULE THAT  
16 ISN'T, YOU KNOW, BOXED UP WITH THE PATENT LOCAL RULES, BUT  
17 FOLLOWS THE GENERAL POLICIES THAT ARE REPRESENTED IN THOSE  
18 RULES, BUT CHANGED TO SHOW THAT I AM DOING THE CLAIM  
19 CONSTRUCTION LATER RATHER THAN EARLIER.

20 BUT IT IS A GOOD IDEA TO SAY WHAT YOUR INVALIDITY  
21 CONTENTIONS ARE, TO SAY WHAT YOUR INFRINGEMENT CONTENTIONS ARE,  
22 AND TO DO ALL THOSE THINGS IN SOME KIND OF FORMAT LIKE THE  
23 LOCAL RULES DO.

24 SO WHY DON'T YOU SEE IF YOU CAN WORK SOMETHING OUT.  
25 YOU DON'T EVEN KNOW IF YOU ARE GOING TO MAKE THOSE CLAIMS, BUT

1 YOU CAN SET A SCHEDULE FOR WHAT YOU'LL DO IN CASE YOU DO MAKE  
2 THEM.

3 **MR. WILES:** IF I MAY BE HEARD ONE SECOND. IN OUR  
4 VIEW, TO THE EXTENT THE PATENT ISSUE IS AN ISSUE IN THIS CASE,  
5 IT'S IF THEY RAISE IT AS AN AFFIRMATIVE DEFENSE IN THEIR ANSWER  
6 WHEN THEY GET AROUND TO ANSWERING.

7 **THE COURT:** I THINK YOU CAN ANTICIPATE THAT THEY  
8 WILL.

9 **MR. WILES:** I DO ANTICIPATE THEY WILL, AND I ALSO  
10 ANTICIPATE THAT WE WILL MOVE TO DISMISS THAT AFFIRMATIVE  
11 DEFENSE BECAUSE AS THE COURT KNOWS, ABBOTT HAS LICENSED NOT  
12 ONLY GSK, BUT MOST OF THE OTHER COMPETITORS IN THE FIELD. SO  
13 TO THE EXTENT THEY EVER HAD A PATENT ARGUMENT IN THIS CASE,  
14 THEY HAVE NOW GIVEN IT AWAY.

15 **THE COURT:** AGAINST YOU MAYBE, BUT NOT AGAINST THE  
16 OTHERS.

17 **MR. WILES:** WELL, I THINK IT'S TO THE EXTENT THAT --  
18 THEY USE IT TO ARGUE THAT IT -- THAT THE PATENT INSULATES THEIR  
19 BEHAVIOR AND IT CAN'T HARM COMPETITION. IN OUR VIEW, GIVEN  
20 THAT THEY HAVE LICENSED PRETTY MUCH THE WHOLE INDUSTRY, THEY  
21 CAN'T MAKE THAT ARGUMENT. AND THEY --

22 **MR. PERWIN:** AND THEY CAN'T MAKE IT AGAINST US  
23 EITHER, YOUR HONOR.

24 IN ADDITION TO THAT, THERE'S THE FOR SALE DOCTRINE  
25 OF THE IMPLIED LICENSE DOCTRINE YOUR HONOR IS FAMILIAR WITH

# Exhibit B

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

|                                   |                                |
|-----------------------------------|--------------------------------|
| SMITHKLINE BEECHAM CORPORATION, ) | Case No. C 07-5702 CW          |
| d/b/a GLAXOSMITHKLINE, )          |                                |
| Plaintiff, )                      | <b>GSK'S INITIAL DISCOVERY</b> |
| vs. )                             | <b>DISCLOSURES</b>             |
| ABBOTT LABORATORIES, )            |                                |
| Defendant. )                      |                                |

GSK's claims derive from Abbott's 400 percent increase in the price it charged for Norvir® (branded ritonavir), a drug that acts to boost the effectiveness of drugs known as protease inhibitors ("PIs"). PIs are used to treat persons with HIV/AIDS. Abbott and GSK both manufacture and sell PIs that are boosted with ritonavir. Abbott is the sole manufacturer of ritonavir, and ritonavir is the sole drug that can be used to boost the effectiveness of PIs. Abbott demanded and took significant payments in exchange for licensing to GSK and others the right to promote their PIs for co-prescription and use with Norvir. After taking those payments and

1 establishing a competitive market for boosted PIs, Abbott sought to injure competition as well as  
2 its competitors, who were also its licensees, by quintupling the price of Norvir except when sold  
3 as part of Abbott's combination PI drug known as Kaletra® (branded lopinavir/ritonavir). Abbott  
4 took these steps in order to make Norvir essentially inaccessible for use with all PIs except Kaletra  
5 thereby extending Abbott's dominance in the market for boosted PIs. Abbott's price increase had  
6 a dramatic negative impact on GSK's ability to sell its competing PI, Lexiva® (branded  
7 fosamprenavir), which was introduced just two weeks before Abbott announced its 400 percent  
8 price increase for Norvir. The price increase had the anticompetitive effect of protecting Kaletra  
9 against new PI products, including GSK's Lexiva, that threatened Kaletra's market dominance.  
10 Abbott's misconduct violates Section 2 of the Sherman Act, the federal prohibition against  
11 monopolization and attempted monopolization, as well as the North Carolina prohibition against  
12 monopolization. Abbott's conduct also breaches the covenant of good faith and fair dealing  
13 contained in GSK's agreement with Abbott and constitutes unfair and deceptive trade practices in  
14 violation of North Carolina's Unfair Trade Practices Act.

15 GSK by and through its undersigned attorneys, provides this Initial Disclosure in  
16 compliance with Rule 26(a)(1) of the Federal Rules of Civil Procedure. This initial disclosure is  
17 based on information reasonably available to GSK at this time. GSK's investigation is ongoing,  
18 and Abbott has not yet answered GSK's Complaint. GSK may amend or supplement these  
19 disclosures based on its continuing investigations and discovery.

20 GSK's initial disclosures are made without in any way waiving: (1) the right to object to  
21 such information on the grounds of competency, privilege, the work product doctrine, undue  
22 burden, relevancy and materiality, hearsay, or any other ground; (2) the right to object to the use of  
23 any such information, for any purposes, in whole or in part, in any subsequent proceeding in this  
24 action or any other action; and (3) the right to object on any and all grounds, at any time, to any  
25 discovery request or proceeding involving or relating to the subject matter of these disclosures.

26 1. **Witnesses**

27 In compliance with Fed. R. Civ. P. 26(a)(1)(A), GSK identifies the individuals set forth  
28 below, to the extent currently known to GSK, as likely to have discoverable information that GSK

may use to support its claims. GSK expressly reserves the right to identify or to call as witnesses additional or different individuals if, during the course of discovery and investigation relating to this case, GSK learns that such additional or different individuals have relevant knowledge.

In making these disclosures, GSK does not waive its right to object to discovery of information from any of these individuals, including by deposition or otherwise, or based on the attorney-client privilege, the informer privilege, work product immunity, or any other applicable privilege or protection. GSK does not consent to authorize any party to communicate with its current or former employees or board members. Any individuals designated in this disclosure with an asterisk (\*) by their name should be contacted care of Alexander F. Wiles, Irell & Manella LLP, 1800 Avenue of the Stars, Suite 900, Los Angeles, CA 90067-4276, (310) 277-1010, regardless of whether their contact information is also set forth in the chart below.

| Name and Address   | Subjects   |
|--|--|
| Audet, Patricia*<br>Vice President, Transactions & Asia Strategy<br>GlaxoSmithKline<br>709 Swedeland Road<br>King of Prussia, PA 19406 | GSK/Abbott license and negotiations  |
| Brotz, Melissa<br>Abbott Laboratories  | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| Chenet, Kyle*<br>Former Manager, Business Development for GSK<br>Current Address Unknown   | GSK/Abbott license and negotiations  |
| Collins, Jeff*<br>Product Director<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709   | Effect of Norvir price increase  |
| Devlin, Jeffrey<br>Divisional Vice President and General Manager of HIV Franchise<br>Abbott Laboratories                               | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| Evans, Paul*<br>Product Manager<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709  | Effect of Norvir price increase  |
| French, Elizabeth*<br>MedPointe Pharmaceuticals<br>265 Davidson Avenue, Suite 300<br>Somerset, NJ 08873-4120                           | GSK/Abbott license and negotiations  |

| Name and Address  | Subjects   |
|---|--|
| Hannan, Michael P.*<br>Acting HIV Regional Sales Director<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709             | Effect of Norvir price increase  |
| Hare, Peter*<br>Vice President, HIV Business Unit<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709                     | Effect of Norvir price increase  |
| Husami, Mateen<br>Abbott Laboratories   | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| Keller, John*<br>Incyte Corporation<br>DuPont Experimental Station<br>Rt. 141 & Henry Clay Road<br>Wilmington, Delaware 19880 | GSK/Abbott license and negotiations  |
| Key, Karen*<br>Former Director in World Wide Business Development for GSK<br>Current Address Unknown                          | GSK/Abbott license and negotiations  |
| Laughery, Tom*<br>Vice President, HIV Marketing<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709                       | Effect of Norvir price increase  |
| Leal, Jesus<br>Abbott Laboratories  | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| Leonard, John<br>Vice President of Global Pharmaceutical Research and Development<br>Abbott Laboratories                      | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| McVeigh, Brian*<br>Director, Business Development<br>GlaxoSmithKline<br>709 Swedeland Road<br>King of Prussia, PA 19406       | Effect of Norvir price increase  |
| Pittman, Marlon*<br>Vice President, HIV Sales<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709                         | Effect of Norvir price increase  |
| Poulos, John<br>Group Vice President of Licensing and New Business Development<br>Abbott Laboratories                         | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| Rubenstock, Allen<br>Abbott Laboratories  | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |

| Name and Address  | Subjects   |
|---|--|
| Schmid, Fred*<br>Former Vice President, HIV Marketing<br>Administration for GSK<br>Current Address Unknown  | Effect of Norvir price increase  |
| Shaefer, Mark*<br>Director, Clinical Development<br>GlaxoSmithKline<br>Five Moore Drive<br>RTP, NC 27709  | Use of protease inhibitors   |
| Violet, Julie*<br>Finance Director, Alliances<br>GlaxoSmithKline<br>Research and Development<br>Greenford Road<br>Greenford<br>Middlesex<br>United Kingdom<br>UB6 0HE | GSK/Abbott license and negotiations  |
| Weinstock, Steven F.<br>Wood Phillips<br>500 West Madison Street Suite 3800<br>Chicago, IL 60661-2562   | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |
| White, Miles<br>Chief Executive Officer<br>Abbott Laboratories  | Abbott's decision to increase price of Norvir; GSK/Abbott license and negotiations |

In addition to the individuals listed above, GSK notes that there are likely other individuals who may have knowledge of relevant facts, including:

- Current and former employees of GSK and their affiliates.
- Persons whose names appear in the documents to be produced by the parties.
- Persons employed by companies that manufacture PIs to be boosted with Norvir.
- Representatives of Abbott involved in discussions with GSK regarding the license

to promote GSK's PIs with Norvir.

GSK also anticipates that there are individuals known to the defendants who have relevant knowledge. GSK incorporates by reference herein its discovery responses and future supplementations thereof, in which other persons with relevant knowledge may be set forth. GSK may seek information from the above-described persons or persons identified by the defendants to support its claims and defenses.

1           2.       **Documents**

2           Pursuant to Fed. R. Civ. P. 26(a)(1)(B), and based upon presently available information,  
3 GSK identifies at least the following categories of documents. GSK reserves the right to identify  
4 and use documents from additional categories if during the course of discovery and investigation  
5 relating to this case, GSK learns that such additional categories contain relevant documents. GSK  
6 also reserves the right to rely on any other documents produced in the course of discovery. GSK  
7 further reserves the right to respond to and/or rebut the contentions and allegations that the  
8 defendants may make.

9                   a.       Documents relating to the development, sale and use of protease inhibitors  
10 that are boosted with Norvir for the treatment of HIV.

11                   b.       Documents relating to the effect of changes in Norvir pricing on the ability  
12 of Abbott's competitors, including GSK, to sell and distribute their protease inhibitors for the  
13 treatment of HIV.

14                   c.       Documents relating to the December 13, 2002 agreement in which Abbott  
15 licensed GSK the right to promote protease inhibitors with ritonavir.

16                   d.       Documents relating to the economic losses GSK suffered as a result of  
17 Abbott's price increase, breach of contract and unfair business practices.

18           3.       **Damages**

19           GSK intends to seek all relief and recover all remedies available under the applicable laws.  
20 Abbott is obligated to produce the documents that are necessary for GSK to compute the amount  
21 of its damages in this action. Such documents include, but are not limited to, documents  
22 concerning the pricing, and forecast and actual sales of Kaletra and Norvir. GSK will need to  
23 examine and analyze these and other documents in order to calculate the damages for which  
24 Abbott is liable.

25           In addition, both the approach to the determination of damages and the amount of damages  
26 will be the subject of expert analysis and discovery. The experts will require time to review  
27 documents, testimony and other information produced by parties including defendants in order to  
28 analyze the damage issues in this matter.

1 On GSK's first cause of action for violations of the Sherman Act, GSK claims the full  
2 amount of damages, as permitted by federal law, resulting from Abbott's anticompetitive conduct,  
3 including its 400% price increase of Norvir, as well as trebling of such damages. On GSK's  
4 second cause of action, GSK claims the full amount of damages as a result of Abbott's breach of  
5 the covenant of good faith and fair dealing contained in the December 13, 2002 agreement  
6 between Abbott and GSK regarding the promotion of protease inhibitors with Norvir. On GSK's  
7 third cause of action, GSK claims the full amount of damages resulting from Abbott's bad faith  
8 and unfair business practices in violation of North Carolina Unfair Trade Practices Act (N.C. Gen.  
9 Stat. § 75-1.1). On GSK's fourth cause of action, GSK claims the full amount of damages  
10 resulting from Abbott's violation of North Carolina's prohibition against monopolization (N.C.  
11 Gen. Stat. § 75-2.1), including trebling of such damages. GSK also seeks pre- and post-judgment  
12 interest on these damages, an award of attorneys' fees and costs, equitable and injunctive relief as  
13 necessary to undo the effects of Abbott's wrongful conduct and to prevent Abbott from repeating  
14 that conduct, and any other relief this Court deems just and proper. GSK reserves the right to  
15 request additional relief as discovery progresses.

16 4. **Insurance**

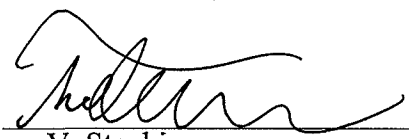
17 At this time, GSK is not aware of any insurance agreements under which any person  
18 carrying on an insurance business may be liable to satisfy part or all of a judgment that may be  
19 entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

20 DATED: January 11, 2008

Respectfully Submitted,

21 IRELL & MANELLA LLP  
22 Alexander F. Wiles (CA 73596)  
23 Brian Hennigan (CA 86955)  
24 Stephanie Kaufman (CA 162644)  
25 Trevor V. Stockinger (CA 226359)

26 ARNOLD & PORTER LLP  
27 Kenneth A. Letzler (Admitted *Pro Hac Vice*)

28 By:   
Trevor V. Stockinger  
Attorneys for Plaintiff  
GlaxoSmithKline

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On January 11, 2008, I served the foregoing document described as **GSK'S INITIAL DISCOVERY DISCLOSURES** on each interested party, as follows:

Samuel S. Park  
Winston & Strawn LLP  
35 W. Wacker Drive  
Chicago, Illinois 60601-9703  
spark@winston.com

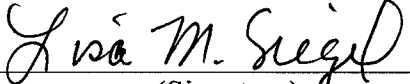
☒ (BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party, as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Irell & Manella LLP, Los Angeles, California. I am readily familiar with Irell & Manella LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

☒ (BY ELECTRONIC MAIL) I caused the foregoing document to be served electronically by electronically mailing a true and correct copy through Irell & Manella LLP's electronic mail system to the e-mail address(es), as set forth above, and the transmission was reported as complete and no error was reported.

Executed on January 11, 2008, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Lisa M. Siegel (lsiegel@irell.com)  
(Type or print name)

  
(Signature)